HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP Nos. 344 & 344 of 2007.

Date of Decision: April 23 , 2007.

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1. CWP No. 343 of 2007.

M/s Namdhari Enterprises ….. Petitioner.

Versus.

State of H.P. & ors. ….Respondents.

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2. CWP No. 344 of 2007.

M/s Dass Enterprises ….Petitioner.

Versus.

State of H.P & ors. … Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?

For the Petitioner:	Mr. M.M.Khanna, Sr.Advocate with Mr.Goverdhan Sharma, Advocate.
For the Petitioner:	Mr. M.S.Chandel, Advocate General with Mr. R.M.Bisht, Dy. Advocate General.

Deepak Gupta, J.

By this judgment, two writ petitions are being disposed of as the following common question of law arises in both petitions:-

> Whether maize is a coarse grain and is exempt from payment of Value Added Tax under item No.13 of Schedule "B" of the H.P.Value Added Tax Act, 2005 or is

liable for payment of tax @ 4% under Part II of Schedule 'A' of the said Act?

It is not disputed by the respondents that maize is a coarse grain. In the Central Sales Tax Act, 1956, Chapter IV relates to Goods of Special Importance in Inter-State trade of Commerce. Section 14 provides that certain goods can be declared to be of special importance for the purpose of Inter-State trade or commerce. Maize is covered under Section 14(1) (vi) of the Central Sales Tax Act, which reads as follows:-

"14. Certain goods to be of special importance in inter-State trade or commerce: - It is hereby declared that the following goods are of special importance inter-State trade or commerce:-

(1) cereals, that is to say –

(i) paddy (Oryza sativa L);

(ii) rice (Oryza sativa L);

(iii) wheat (triticum valgar, T.compactum, T.sphaerococcum, T.durum, T. aestivum L. T. dicoccum);

(iv) jowar, or milo (Sorghum vulgare Pers);

(v) bajra (Pennisctum typhoideum L);

(vi) maize (Zea mays D). xxx xxxx xxxx xxxx"

Section 15 of the Act provides that no State can impose tax at a rate exceeding 4% on the sale or purchase price of the goods so declared by the State under Section 14 of the Central Sales Tax Act. It is thus clear that no State can impose tax at the rate above 4% on the goods which have been declared to be goods of special importance under Section 14.

The State of H.P enacted the H.P Value Added Tax Act (H.P. VAT Act) in the year 2005. This Act provides that certain goods are to be charged @ 4% . Certain other goods are leviable for tax at

higher or lower rate. Some goods are exempt from tax and all other goods are leviable to tax @ 12.5%. Part II of Schedule 'A" deals with goods taxable @ 4%. Item No. 28 of Part II reads as follows:-

> " Declared goods as specified in Section 14 of the Central Sales Tax Act, 1956 (Central Act, 74 of 1956)."

Schedule 'B' of the Act framed under Section 9 deals with goods exempt from tax. The goods enlisted in this Schedule are totally exempt from imposition of tax. Section 13 of Schedule 'B" reads as under:-

> "13. Coarse grains other than paddy, rice and wheat."

The case of the petitioner as put forth by Shri M.M.Khanna learned senior Advocate is that maize being a coarse grain is specifically covered under item No.13 of Schedule 'B' and is, therefore, exempt from tax. On the other hand, the stand of the State is that maize is specifically included under Section 14 of the Central Sales Tax Act and is covered under item No.28 of Part II of Schedule 'A' of the H.P. VAT Act, 2005 and is, therefore, chargeable to tax @ 4%. Interestingly, both sides have relied upon the principle "Generalibus specialia derogant" – meaning "Special things derogate from general". Both sides are in agreement that the general entry must yield to the special entry. Whereas the case of the petitioner is that the general entry is item No.28 in Part II of Schedule 'A' and the special entry to which it must yield is item No. 13 in Schedule 'B', the stand of the State is that the H.P. VAT Act is the general Act and item No. 13 of Schedule 'B' is the general entry and Section 14 of the Central Sales Act is the special enactment and, therefore, entry in Schedule 'B' of the VAT Act must yield to the specific provisions of the Central Sales Tax Act.

We have carefully considered the matter. In our opinion, the stand of the petitioner appears to be more logical and the stand of the State is not correct. The Central Sales Tax Act is not a special Act but is a general Act. By virtue of Section 14 of the said Act, certain goods declared to be of special importance for the purpose of Inter-state trade or commerce. Under Section 15, the power of the State Government to levy tax on the sale or purchase of such items has been curtailed and the State Government cannot levy tax at a rate exceeding 4%. The intention behind this is quite evident. It is to ensure that in our vast country there should be free movement of essential goods and items of day to day use which have been declared to be of special importance under Section 14 of the Central Act. Parliament, in its wisdom thought it fit and proper that these goods being of special importance should not be taxed at a rate more than 4%. However, this is the maximum rate prescribed. The Central Government has not laid down these goods must be taxed @ 4%. It is for the State government to decide whether to levy any tax on these goods or not. If the State Government wants to levy the tax on these special goods, it can levy tax at any rate not exceeding 4%. Therefore, it is difficult to accept the argument of the State that Section 14 of the Central Sales Tax Act is a special enactment vis-à-vis the item No.13 of the Schedule 'B'. In fact, in our opinion, the H.P.VAT Act is a self contained code. Under Part II of Schedule 'A', item No.28 deals with all goods declared to be specified goods under Section 14 of the Central Sales Tax Act and tax @ 4% per annum is payable on these goods. Section 9 of the VAT Act gives power to the State Government to exempt certain goods from payment of tax. The State has in the exercise of this power specifically made entry No.13 in

Schedule ‘B’ of the H.P.VAT Act . By virtue of this entry, coarse grains other than paddy, rice and wheat are exempt from payment of tax.

As stated above, no dispute has been raised before us that maize is a coarse grain. Therefore, it falls under item No.13. Item No.13 of Schedule ‘B’ specifically deals with coarse grains whereas item No.28 under Part II of Schedule ‘A’ deals with all goods declared to be of special importance under Section 14 of the Central Sales Tax Act. It is clear that entry No.28 under Part II of Schedule ‘A’ is the general entry and entry No.13 of Schedule ‘B’ is the specific entry and therefore, the specific entry must prevail.

While taking the aforesaid view, we are also fortified by the provisions of Section 14 of the Central Act as extracted above by virtue of which many cereals including paddy, rice wheat and maize have been declared to be special goods under Section 14 of the Central Sales Tax Act. If entry No.28 of Part II, Schedule “A” is taken into consideration, all these cereals would be taxable @ 4% per annum. Item No.13 in Schedule “B” specifically provides that coarse grains other than paddy, rice and wheat are exempt from tax. The intention of the legislation is clear Whereas paddy, rice and wheat will continue to be taxed @ 4% per annum, under item No. 28, other coarse grains including maize, jowar, bajra, ragi etc. would be exempt from tax. There was no idea of incorporating entry No.13 in Schedule ‘B’ if all coarse grains as well as paddy, rice and wheat had to be taxed at 4%. Almost all coarse grains like jowar, bajra, maize, ragi, kadon, kutki, barley have been declared to be of special importance under Section 14 of the Central Act. If the argument of the State is accepted then entry No.13 of Schedule ‘B’ shall be rendered otiose as there would be virtually no coarse grain falling under this entry. This could not have been the intention of the legislature.

In view of the above discussion, we hold that maize which is admittedly a coarse grain is exempt from tax under item No.13 of Schedule “B” of the H.P. VAT Act, 2005. The writ petitions are allowed in the aforesaid terms. No order as to costs.

(Deepak Gupta), J.

April 23, 2007. (Surinder Singh), J.

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